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IN THE UNITED STATES BANKRUPTCY COURT
THE DISTRICT OF ARIZONA

In re:

ARTE SENIOR LIVING L.L.C.,
Debtor.

Chapter 11 Proceedings

Case No. 2:12-bk-14993-GBN

**PLAN OF REORGANIZATION
UNDER CHAPTER 11 OF THE
BANKRUPTCY CODE FOR ARTE
SENIOR LIVING L.L.C.**

1 SMA Issuer I LLC (“SMA”), by and through its undersigned counsel, hereby submits to
2 the Court and creditors of Arte Senior Living L.L.C. (the “Debtor”) the following *Plan of*
3 *Reorganization Under Chapter 11 of the Bankruptcy Code for Arte Senior Living L.L.C.*, dated
4 April 4, 2013 (the “Plan”), pursuant to §§ 1121(c)(3) of chapter 11, title 11, of the United
5 States Code (the “Bankruptcy Code”).

6 **I. DEFINITIONS**

7 For purposes of this Plan, except as expressly provided herein or unless the context
8 otherwise requires, all capitalized terms not otherwise defined herein shall have the meanings
9 ascribed to them in this Section I of the Plan. Any term used in the Plan that is not defined in
10 the Plan, but is defined in the Bankruptcy Code or the Bankruptcy Rules, retains the meaning
11 ascribed to such term in the Bankruptcy Code or the Bankruptcy Rules. Whenever the context
12 requires, such terms include the plural as well as the singular, the masculine gender includes
13 the feminine gender, and the feminine gender includes the masculine gender.

14 As used in this Plan, the following terms have the meanings specified below:

15 **Administrative Claim:** Any right to payment constituting a cost or expense of
16 administration of the Debtor’s case Allowed under sections 503(b), 507(a)(1), and 507(b) of the
17 Bankruptcy Code, including, without limitation: (a) any actual and necessary costs and
18 expenses of preserving the Estate; (b) any actual and necessary costs and expenses of operating
19 the Debtor’s business; (c) any indebtedness or obligations incurred or assumed by the Debtor as
20 Debtor in Possession during the pendency of the Debtor’s case; and (d) any compensation for
21 professional services rendered and reimbursement of expenses incurred, to the extent Allowed
22 by Final Order under section 330 or 503 of the Bankruptcy Code.

23 **Allowed Claim:** Allowed Claim shall mean a Claim:

24 (a) with respect to which a proof of claim has been filed with the Court
25 within the applicable period of limitation fixed by Rule 3003 of the Rules of
26 Bankruptcy Procedure or by any Order of the Court setting a bar date, and to which no
27 objection to the allowance of the Claim has been filed by the Debtor or any other party
28 or as to which any such objection has been determined by an order or judgment of the

1 Court which is no longer subject to appeal and to which no appeal is pending, or

2 (b) which is scheduled in the list of creditors prepared and filed with the
3 Court pursuant to Rule 1007(b), Rules of Bankruptcy Procedure, and not listed as
4 disputed, contingent or unliquidated.

5 An Allowed Claim shall not include unmatured or post-petition interest, penalties, fees
6 or costs, unless specifically stated in the Plan. A claim shall be allowed only for the amount of
7 money or money's worth actually paid to the Debtor, plus any interest allowed by the Court or
8 agreed upon by the Debtor. Notwithstanding § 502(a) of the Code and Rules 3001 and 3003,
9 for the purposes of the Plan, a Claim shall not be an Allowed Claim unless it satisfies the
10 definition of Allowed Claim under this Plan.

11 **Allowed Interest:** An Interest in the Debtor held by a person or entity, as of the
12 Effective Date, and as to which (a) such Interest was listed in the Debtor's Schedules of Assets
13 and Liabilities and Statement of Financial Affairs, and no objection has been made within the
14 time allowed for the making of objections, (b) a Final Order has been entered allowing such
15 Interest, or (c) a timely and proper proof of interest has been filed, and as to which no objection
16 to the allowance of the Interest has been filed by the Debtor or any other party, or as to which
17 any such objection has been determined by an order or judgment of the Court which is no
18 longer subject to appeal and to which no appeal is pending.

19 **Allowed Priority Claim:** The Allowed Claim of a Claimant that is entitled to priority
20 in payment under 11 U.S.C. §§ 507(a)(3) through (a)(10).

21 **Allowed Secured Claim:** An Allowed Claim to the extent that such Allowed Claim is
22 secured by a lien which is unavoidable, on property in which the Estate has an interest, to the
23 extent of the value of such Creditor's interest in the Estate's interest in such property as
24 determined in light of the purpose of the valuation and of the proposed disposition and use of
25 such property.

26 **Allowed Unsecured Claim:** An Allowed Claim to the extent that such Allowed Claim
27 is not secured by a lien on property in which the Estate has an interest.

28 **Bankruptcy Code:** 11 U.S.C. §§ 101, et seq.

1 **Bankruptcy Court:** The United States Bankruptcy Court for the District of Arizona or
2 any other court which may have jurisdiction over this case or any proceeding arising under, in,
3 or relating to this case.

4 **Bankruptcy Rules:** The Federal Rules of Bankruptcy Procedure in effect as of the
5 Petition Date.

6 **Cash:** Legal tender of the United States of America.

7 **Chapter 11:** Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 1101, et
8 seq.

9 **Claim:** (a) A right to payment, whether or not such right is reduced to judgment,
10 liquidated, un-liquidated, fixed, contingent, matured, un-matured, disputed, undisputed, legal,
11 equitable, secured or unsecured, which right arose or accrued prior to the Confirmation Date;
12 (b) a right to an equitable remedy for breach of performance if such breach gives rise to a right
13 to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed,
14 contingent, matured, un-matured, disputed, undisputed, secured, or unsecured.

15 **Claimant or Creditor:** Any person or entity that asserts a Claim.

16 **Confirmation:** The signing by the Court of the Confirmation Order.

17 **Confirmation Date:** The date upon which the Confirmation Order is entered upon the
18 Bankruptcy Court's docket.

19 **Confirmation Order:** The Order signed by the Bankruptcy Court pursuant to 11
20 U.S.C. § 1129 confirming this Plan.

21 **Contingent Claim:** Any Claim for which a proof of claim has been filed with the
22 Bankruptcy Court: (a) which was not filed in a sum certain, or which has not accrued and is
23 dependent on a future event that has not occurred and may never occur, and (b) which has not
24 been allowed on or before the Confirmation Date.

25 **Court:** The Bankruptcy Court.

26 **Debtor:** Arte Senior Living, LLC, an Arizona limited liability company.

27 **Disbursing Agent:** The Reorganized Debtor shall be the Disbursing Agent and shall
28 make distributions to holders of Allowed Claims under the Plan.

1 **Disputed Claim:** A Claim which the Debtor listed as un-liquidated, disputed or
2 contingent in its Schedules of Assets and Liabilities, or to which an objection has been filed
3 which has not been resolved by a Final Order of the Bankruptcy Court.

4 **Effective Date:** The first date on which each of the conditions set forth in Section XI
5 of this Plan have been satisfied or waived in accordance with such section; provided that if a
6 stay of the Confirmation Order is in effect, then the Effective Date shall mean the first business
7 day after such stay is no longer in effect, each of the conditions set forth in Section XI of this
8 Plan have been satisfied or waived in accordance with such section.

9 **Estate:** The Debtor's bankruptcy estate created by the filing of the Petition as identified
10 and described in § 541 of the Bankruptcy Code.

11 **Final Order:** An order or judgment of the Bankruptcy Court as to which no stay has
12 been entered.

13 **Guarantors:** Those parties to the Guaranty Agreement, individually and collectively,
14 jointly and severally, Stephen A. Kollins, personally and as Trustee of The Restated and
15 Amended Stephen A. Kollins Living Trust dated April 3, 1992; David L. Craik and Violet
16 Craik; and Jason D. Craik and Christine Craik.

17 **Guaranty Agreement:** That certain Guaranty Agreement dated January 17, 2008 by
18 the Guarantors in favor of Bank of America, N.A., to which SMA is successor-in-interest.

19 **Insider:** A person or entity within the definition contained at § 101(31) of the
20 Bankruptcy Code.

21 **Interest:** Any equity interest in the Debtor as of the Petition Date.

22 **Interest Holder:** Any person or persons owning an Interest in the Debtor as of the
23 Petition Date.

24 **Person:** Any individual, corporation, partnership, joint venture, association, joint stock
25 company, trust, unincorporated association or organization, governmental agency, or associated
26 political subdivision.

27 **Petition:** The original voluntary petition for relief filed by the Debtor under
28 Chapter 11.

1 **Petition Date:** The date on which the Petition was filed: July 5, 2012.

2 **Plan:** This Plan and any amendments or supplements thereto.

3 **Property:** The property owned by the Debtor, and the principal asset of the Estate,

4 consisting of certain real property and improvements known as the Arte resort retirement

5 community located at 11415 North 114th Street, Scottsdale, Arizona.

6 **Reorganized Debtor:** The Debtor after the Effective Date.

7 **SMA:** SMA Issuer I, LLC.

8 **Schedules or Schedules and Statements:** The Schedules of Assets and Liabilities and

9 Statement of Financial Affairs, and any amendments thereto, filed by the Debtor in this case.

10 **Tenants:** The parties that reside at the Property.

11 **Undersecured:** The term describing the Allowed Claim of a Secured Creditor when

12 the value of the collateral securing said Allowed Claim is less than the amount of the Allowed

13 Claim.

14 **Unliquidated:** The term describing the Allowed Claim of a Creditor when the value of

15 the claim has not been determined or stated with finality.

16 **II. CLASSIFICATION OF CLAIMS AND INTERESTS**

17 **A. Class 1: Priority Claims**

- 18 1. Class 1-A consists of Allowed Administrative Claims.
- 19 2. Class 1-B consists of Allowed Priority Claims under 11 U.S.C.
- 20 §507(a)(8).

21 **B. Class 2: Secured Claims**

- 22 1. Class 2-A consists of the Allowed Secured Claim of SMA.
- 23 2. Class 2-B consists of the Allowed Secured Claim of Maricopa County.
- 24 3. Class 2-C consists of the Allowed Secured Claim of Enterprise Bank.
- 25 4. Class 2-D consists of the Allowed Secured Claim of TCF Equipment
- 26 Finance Inc.

27 **C. Class 3: Unsecured Claims**

- 28 1. Class 3-A consists of the Allowed Unsecured Claim of SMA.

- 1 2. Class 3-B consists of Allowed Unsecured Tenant Deposit Claims.
- 2 3. Class 3-C consists of the Allowed Unsecured Claims of Creditors not
- 3 treated elsewhere under this Plan.

4 **D. Class 4: Interest Holders**

- 5 1. Class 4 consists of all Allowed Interests of Interest Holders.

6 **III. IMPAIRMENT OF CLASSES**

7 Classes 2-A, 3-A and 4 are Impaired, as that term is defined in section 1124 of the

8 Bankruptcy Code. All other Classes under the Plan are unimpaired within the meaning of

9 section 1124 of the Bankruptcy Code.

10 **IV. TREATMENT OF CLASSES**

11 **A. Class 1: Priority Claims**

12 **1. Class 1-A: Administrative Claims**

13 This Class consists of Allowed Administrative Claims. Ordinary course Administrative

14 Claims shall be paid as they come due in the ordinary course. Other Administrative Claims

15 shall be paid on the later of (i) as soon as reasonably practicable after the Effective Date, or (ii)

16 approval by the Bankruptcy Court, after notice and hearing. For the avoidance of doubt, other

17 than ordinary course Administrative Claims, the Debtor shall not pay any Administrative

18 Claims prior to approval by the Bankruptcy Court, after notice and a hearing.

19 This Class is not impaired, and is deemed to accept the Plan.

20 **2. Class 1-B: Tax Claims**

21 This Class consists of Allowed Priority Claims under 11 U.S.C. § 507(a)(8) which are

22 not otherwise treated as secured claims herein. As provided in 11 U.S.C. § 1129(a)(9)(C),

23 unless Claimants holding Claims in this Class agree to an alternative form of treatment, the

24 Allowed Priority Claims of Class 1-B shall receive regular installment payments in cash a) of a

25 total value, as of the Effective Date of the Plan, equal to the allowed amount of such Claim; b)

26 over a period ending not later than 5 years after the date of the order for relief under section

27 301, 302, or 303; and c) in a manner not less favorable than the most favored non-priority

28 unsecured claim provided for by the Plan (other than cash payments made to a class of creditors

1 under section 1122(b)).

2 This Class is not impaired, and is deemed to accept the Plan.

3 **B. Class 2: Secured Claims**

4 **1. Class 2-A: Allowed Secured Claim of SMA**

5 This class consists of the Allowed Secured Claim of SMA. SMA asserts a Claim
6 against the Debtor, secured by the Property, in the approximate amount of \$35,114,059.62.
7 The Undersecured portion of SMA's Allowed Claim shall be treated as an unsecured claim in
8 Class 3-A.

9 On the Effective Date, as set forth in Section IV.D. below, all Interests in the Debtor
10 shall be cancelled. On the Effective Date, or as soon thereafter as is reasonably practicable, all
11 membership interests in the Reorganized Debtor shall be issued to SMA, or an entity
12 designated by SMA, in full satisfaction of the secured portion of SMA's Allowed Secured
13 Claim. SMA consents to this treatment and accepts the Plan, but for the avoidance of doubt,
14 SMA's consent to this treatment and acceptance of the Plan shall not constitute (or be deemed
15 to constitute) a waiver, release or discharge of any Claims or causes of action that SMA has or
16 may have against any person or entity other than the Debtor, including, without limitation, any
17 Claims or causes of action against the Guarantors.

18 This Class is impaired, and shall be entitled to vote on the Plan. Class 2-A accepts the
19 Plan.

20 **2. Class 2-B: Allowed Secured Claim of Maricopa County**

21 This Class consists of the Allowed Secured Claim of Maricopa County, Arizona
22 ("Maricopa County"), represented to be in the approximate amount of \$81,229, secured by a
23 tax lien on the Property.

24 Except to the extent that Maricopa County agrees to different treatment, at the sole
25 option of the Reorganized Debtor, (i) the Allowed Secured Claim of Maricopa County shall be
26 reinstated and rendered unimpaired in accordance with section 1124 of the Bankruptcy Code,
27 or (ii) Maricopa County shall receive Cash in an amount equal to the Allowed Secured Claim
28 of Maricopa County, including any interest on such Claim required to be paid pursuant to

1 section 506(b) of the Bankruptcy Code, on the later of the Effective Date and the date the
2 Allowed Secured Claim of Maricopa County becomes an Allowed Secured Claim or as soon
3 thereafter as is practicable.

4 Maricopa County will retain its existing secured interest in the Property until this claim
5 has been satisfied in full.

6 This Class is not impaired, and is deemed to accept the Plan.

7 **3. Class 2-C: Allowed Secured Claim of Enterprise Bank**

8 This Class consists of the Allowed Secured Claim of Enterprise Bank ("Enterprise"), in
9 the approximate amount of \$7,230, secured by a lien on a 2009 Cadillac DTS ("Enterprise
10 Collateral") used by the Debtor in connection with the operation and maintenance of the
11 Property.

12 Except to the extent that Enterprise agrees to different treatment, at the sole option of
13 the Reorganized Debtor, (i) the Allowed Secured Claim of Enterprise shall be reinstated and
14 rendered unimpaired in accordance with section 1124 of the Bankruptcy Code, (ii) Enterprise
15 shall receive Cash in an amount equal to the Allowed Secured Claim of Enterprise, including
16 any interest on the Allowed Secured Claim of Enterprise required to be paid pursuant to section
17 506(b) of the Bankruptcy Code, on the later of the Effective Date and the date the Allowed
18 Secured Claim of Enterprise becomes an Allowed Secured Claim or as soon thereafter as is
19 practicable, or (iii) Enterprise shall receive the Enterprise Collateral and any interest on such
20 Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, on the later of the
21 Effective Date and the date such Claim becomes an Allowed Secured Claim, or as soon
22 thereafter as is practicable.

23 Enterprise will retain its existing secured interest in the Property until this claim has
24 been satisfied in full.

25 This Class is not impaired, and is deemed to accept the Plan.

26 **4. Class 2-D: Allowed Secured Claim of TCF Equipment Finance Inc.**

27 This Class consists of the Allowed Secured Claim of TCF Equipment Finance Inc.
28 ("TCF"), in the approximate amount of \$32,597, secured by a lien on a 2010 Ford Shuttle Bus

1 (“TCF Collateral”) used by the Debtor in connection with the operation and maintenance of the
2 Property.

3 Except to the extent that TCF agrees to different treatment, at the sole option of the
4 Reorganized Debtor, (i) the Allowed Secured Claim of TCF shall be reinstated and rendered
5 unimpaired in accordance with section 1124 of the Bankruptcy Code, (ii) TCF shall receive
6 Cash in an amount equal to the Allowed Secured Claim of TCF, including any interest on the
7 Allowed Secured Claim of TCF required to be paid pursuant to section 506(b) of the
8 Bankruptcy Code, on the later of the Effective Date and the date the Allowed Secured Claim of
9 TCF becomes an Allowed Secured Claim or as soon thereafter as is practicable, or (iii) TCF
10 shall receive the TCF Collateral and any interest on such Claim required to be paid pursuant to
11 section 506(b) of the Bankruptcy Code, on the later of the Effective Date and the date such
12 Claim becomes an Allowed Secured Claim, or as soon thereafter as is practicable.

13 TCF will retain its existing secured interest in the Property until this claim has been
14 satisfied in full.

15 This Class is not impaired, and is deemed to accept the Plan.

16 **C. Class 3: Unsecured Claims**

17 **1. Class 3-A: Allowed Unsecured Claim of SMA**

18 This Class consists of the Allowed Unsecured Claim of SMA. SMA shall receive no
19 distribution on account of its Unsecured Claim. SMA consents to this treatment and accepts
20 the Plan, but for the avoidance of doubt, SMA’s consent to this treatment and acceptance of the
21 Plan shall not constitute (or be deemed to constitute) a waiver, release or discharge of any
22 Claims or causes of action that SMA has or may have against any person or entity other than
23 the Debtor, including, without limitation, any Claims or causes of action against the
24 Guarantors.

25 This Class is impaired, and is entitled to vote on the Plan. Class 3-A accepts the Plan.

26 **2. Class 3-B: Allowed Unsecured Tenant Deposit Claims**

27 This Class consists of all Allowed Unsecured Claims of Tenants based on security
28 deposits paid in accordance with the terms of their leases. These Claims shall be treated

consistently with the terms of each Tenant's underlying lease and related documentation.

This Class is not impaired, and is deemed to accept the Plan.

3. Class 3-C: All Other Allowed Unsecured Claims

This Class consists of all Allowed Unsecured Claims not otherwise provided for in this Plan. The holders of Allowed Unsecured Claims in this Class will each receive a distribution equal to one-hundred percent (100%) of their Allowed Unsecured Claims as soon as reasonably practicable following Effective Date.

This Class is not impaired, and is deemed to accept the Plan.

D. Class 4: Interest Holders

Class 4 consists of the Interests in the Debtor. All Interests in Debtor shall be cancelled as of the Effective Date, and each Interest Holder shall neither receive nor retain any property on account of such Interest.

This Class is impaired, and is deemed to reject the Plan.

V. MEANS FOR EXECUTING THE PLAN

A. Funding

The Plan will be fully funded by SMA and revenue generated through operation of the Property.

B. Liquidation of Estate Property

The Reorganized Debtor shall have the authority to retain such brokers, agents, counsel, or representatives as it deems necessary to market, lease and/or sell assets of the Reorganized Debtor.

C. Disbursing Agent

The Reorganized Debtor shall act as the Disbursing Agent under the Plan.

D. Documentation of Plan Implementation

In the event any entity which possesses an Allowed Secured Claim or any other lien in any of the Debtor's assets for which the Plan requires the execution of any documents to incorporate the terms of the Plan, fails to provide a release of its lien or execute the necessary documents to satisfy the requirements of the Plan, the Debtor may record a copy of this Plan or

1 the Confirmation Order with the appropriate governmental agency and such recordation shall
2 constitute the lien release and creation of any necessary new liens to satisfy the terms of the
3 Plan. If the Debtor deems advisable, it may obtain a further Order from the Court that may be
4 recorded in order to implement the terms of the Plan.

5 **VI. EFFECT OF CONFIRMATION**

6 Except as otherwise provided in the Plan or the Confirmation Order, and except as may
7 be provided in Section 1141(d)(2),(d)(3) and (d)(6) of the Bankruptcy Code, Confirmation acts
8 as a discharge, effective as of the Confirmation Date, of any and all debts of the Debtor that
9 arose any time before the entry of the Confirmation Order including, but not limited to, all
10 principal and all interest accrued thereon, pursuant to § 1141 (d)(1) of the Bankruptcy Code.
11 The Discharge shall be effective as to each Claim, regardless of whether a proof of claim
12 thereon was filed, whether the Claim is an Allowed Claim, or whether the holder thereof votes
13 to accept the Plan.

14 For the avoidance of doubt, nothing in the Plan (including this section) shall constitute a
15 waiver, release or discharge of any Claims or causes of action that SMA has or may have
16 against any person or entity other than the Debtor, including, without limitation, any Claims or
17 causes of action against the Guarantors.

18 **VII. OBJECTIONS TO AND ESTIMATIONS OF CLAIMS**

19 **A. Objections and Bar Date for Filing Objections.**

20 As soon as practicable, but in no event later than fifty (50) days after the Effective Date,
21 objections to Claims shall be filed with the Bankruptcy Court and served upon the holders of
22 each of the Claims to which objections are made pursuant to the Bankruptcy Code and the
23 Bankruptcy Rules. Objections filed after such date will be barred.

24 **B. Settlement of Claims.**

25 Settlement of any objection to a Claim not exceeding \$10,000 shall be permitted on the
26 fifteenth (15th) day after notice of the settlement has been provided to the Reorganized Debtor,
27 the Creditors, the settling party, and other persons specifically requesting such notice, and if on
28 such date there is no written objection filed, such settlement shall be deemed approved. In the

1 event of a written objection to the settlement, the settlement must be approved by the Court on
2 notice to the objecting party.

3 **C. Estimation of Claims.**

4 For purposes of making distributions provided for under the Plan, all Claims objected to
5 shall be estimated by the Disbursing Agent at an amount equal to (i) the amount, if any,
6 determined by the Court pursuant to § 502(c) of the Bankruptcy Code as an estimate for
7 distribution purposes; (ii) an amount agreed to between the Debtor and the Claimant; or (iii)
8 that amount set forth as an estimate in the Plan. Notwithstanding anything herein to the
9 contrary, no distributions shall be made on account of any Claim until such Claim is an
10 Allowed Claim.

11 **D. Unclaimed Funds and Interest.**

12 Distributions to Claimants shall be mailed by the Reorganized Debtor to the Claimants
13 at the address appearing on the master mailing matrix unless the Claimant provides the
14 Reorganized Debtor with an alternative address. For a period of one year from the date that a
15 distribution was to be made by the disbursing agent but has gone uncollected by the Claimant,
16 the disbursing agent shall retain any distributions otherwise distributable hereunder which
17 remain unclaimed or as to which the disbursing agent has not received documents required
18 pursuant to the Plan. Thereafter, the unclaimed funds shall be deposited in the appropriate
19 distribution account for distribution to other Claimants entitled to participate in such respective
20 fund.

21 **VIII. CLOSING OF CASE**

22 Until this case is officially closed, the Reorganized Debtor will be responsible for filing
23 pre- and post-confirmation reports required by the United States Trustee and paying the
24 quarterly post-confirmation fees of the United States Trustee, in cash, pursuant to 28 U.S.C. §
25 1930, as amended. Pursuant to 11 U.S.C. § 1129(a)(12), all fees payable under § 1930 of Title
26 28, as determined by the Court at the hearing on confirmation of the Plan, will be paid, in cash,
27 on the Effective Date.

1 **IX. MEANS FOR EXECUTION OF PLAN**

2 Upon entry of the Confirmation Order, all matters provided under the Plan shall be
3 deemed authorized and approved without any requirement or further action by the Debtor, the
4 Debtor's members, managers and/or managing members. The entry of the Confirmation Order
5 will constitute authorization and direction for the Debtor to take or cause to be taken all
6 corporate or other actions necessary or appropriate to consummate and implement the
7 provisions of the Plan (including executing any necessary documents prior to, on and after the
8 Effective Date, and all such actions taken or caused to be taken will be deemed to have been
9 authorized and approved by the Bankruptcy Court. All such actions will be deemed to have
10 occurred and will be in effect from and after the Effective Date pursuant to applicable non-
11 bankruptcy law and the Bankruptcy Code, without any requirement of further action by the
12 partners, members, stockholders, administrators, agents, officers or directors of the Debtor.

13 Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange
14 of a security, or the making or delivery of an instrument of transfer from the Debtor to SMA or
15 any other person or entity pursuant to this Plan shall not be subject to any document recording
16 tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp tax, real estate
17 transfer tax, mortgage recording tax, or other similar tax or governmental assessment. State
18 and local governmental officials and/or agents are directed to forego the collection of any such
19 tax or governmental assessment and to accept for filing and recordation any of the foregoing
20 instruments or other documents without the payment of any such tax or governmental
21 assessment.

22 **X. SUBSTANTIAL CONSUMMATION**

23 Pursuant to 11 U.S.C. §1101, consummation of the confirmed Plan shall occur on or
24 after the Effective Date.

25 **XI. CONDITIONS SUBSEQUENT**

26 The Plan shall not become effective unless the following conditions are satisfied or
27 waived by SMA in whole or in part:

- 28 1. The Confirmation Order is a final order acceptable to SMA, in full force and effect

1 and not subject to any stay or injunction.

2 2. No material amendments, modifications, supplements or alterations shall have been
3 made to the Plan or any document delivered in connection therewith, without the
4 express written consent of SMA, which consent may be granted, withheld, or
5 conditioned in its sole discretion.

6 3. All actions and all agreements, instruments and other documents necessary to
7 implement the terms and provisions of the Plan are executed or have occurred.

8 **XII. MODIFICATION OF THE PLAN**

9 Pursuant to § 1127 of the Bankruptcy Code, SMA may:

10 (a) Modify the Plan at any time before Confirmation, so long as the Plan, as
11 modified, meets the requirements of §§ 1122 and 1123 of the Bankruptcy Code. After SMA
12 files such a modification with the Court, the Plan as modified will become the operative plan.

13 (b) Modify the Plan at any time after confirmation of the Plan and before substantial
14 consummation of the Plan, so long as the Plan, as modified, meets the requirements of §§ 1122
15 and 1123 of the Bankruptcy Code. The Plan, as so modified, shall become the operative plan
16 only if circumstances warrant such modification and the Court, after notice and a hearing,
17 confirms such plan, as modified, under § 1129 of the Bankruptcy Code.

18 (c) SMA shall comply with section 1125 of the Bankruptcy Code with respect to the
19 Plan, as modified.

20 (d) Any holder of a Claim or Interest that has accepted or rejected a Plan is deemed
21 to have accepted or rejected, as the case may be, such Plan, as modified, unless, within the time
22 fixed by the Court, such holder changes such holder's previous acceptance or rejection.

23 (e) The Plan, as modified, shall become the operative plan only after there has been
24 disclosure under § 1125 as the Court may direct, notice and a hearing, and such modification is
25 approved.

26 **XIII. REVOCATION OR WITHDRAWAL OF THE PLAN**

27 SMA reserves the right to revoke or withdraw the Plan at any time prior to entry of the
28 Confirmation Order. If SMA revokes or withdraws the Plan, or if confirmation of the Plan

1 does not occur, then the Plan shall be null and void in all respects; any settlement or
2 compromise embodied in the Plan (including the fixing or limiting to an amount any Claim or
3 Interest or Class of Claims or Interests), any assumption or rejection of Executory Contracts
4 effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be
5 deemed null and void; and nothing contained in the Plan, and no acts taken in preparation for
6 consummation of the Plan, shall: (a) constitute or be deemed to constitute a waiver or release
7 of any Claims by or against, or any Interests in, the Debtor or any other entity; (b) prejudice in
8 any manner the rights of SMA or any entity in any further proceedings involving the Debtor;
9 (c) constitute an admission of any sort by SMA or any other entity, or (d) constitute (or be
10 deemed to constitute) a waiver, release or discharge of any Claims or causes of action that
11 SMA has or may have against any person or entity other than the Debtor, including, without
12 limitation, any Claims or causes of action against the Guarantors.

13 **XIV. JURISDICTION OF THE COURT**

14 The Court will retain jurisdiction until this Plan has been fully consummated for,
15 including but not limited to, the following purposes:

16 1. To determine the classification of the Claims of any Creditors and the re-
17 examination of any Claims which have been allowed for the purposes of voting, and for the
18 determination of such objections as may be filed to the Creditor's Claims. The failure by the
19 Debtor or the Reorganized Debtor to object to or examine any Claim for the purpose of voting
20 shall not be deemed to be a waiver of the right to object to or to re-examine the Claim in whole
21 or in part.

22 2. To determine any Claims which are disputed by the Debtor, SMA or the
23 Reorganized Debtor, whether such objections are filed before or after Confirmation, and to
24 estimate any Unliquidated or Contingent Claims pursuant to 11 U.S.C. § 502(c)(1) upon
25 request of the Debtor or any holder of a Contingent or Unliquidated Claim, and to make
26 determinations regarding any objection to such Claim.

27 3. To determine all questions and disputes regarding title to the assets of the Estate,
28 and to determine and adjudicate all causes of action, controversies, disputes or conflicts,

1 whether or not subject to action pending as of the date of Confirmation, between the Debtor
2 and any other party, including but not limited to, any rights of the Debtor or the Reorganized
3 Debtor to recover assets pursuant to the provisions of the Bankruptcy Code.

4 4. To correct any defect, cure any omission or make any reconciliation of any
5 inconsistencies in this Plan, or the Confirmation Order, as may be necessary to carry out the
6 purposes and intent of this Plan.

7 5. To address and approve any proposed modification of this Plan after
8 Confirmation, pursuant to the Bankruptcy Rules and the Bankruptcy Code.

9 6. To enforce and interpret the terms and conditions of this Plan.

10 7. To enter any order, including injunctions, necessary to enforce the title, rights
11 and powers of the Debtor or the Reorganized Debtor, and to impose such limitations,
12 restrictions, terms and conditions of such title, right and power that this Court may deem
13 necessary.

14 8. To enter an order concluding and terminating this case.

15 **XV. RETENTION AND ENFORCEMENT OF CLAIMS**

16 Pursuant to § 1123(b)(3) of the Bankruptcy Code, the Reorganized Debtor shall retain
17 and may enforce any and all Claims of the Debtor, except those Claims specifically waived
18 herein. Any retained causes of action include, but are not limited to, all avoidance actions,
19 fraudulent conveyance actions, preference actions, and other Claims and causes of action of
20 every kind and nature whatsoever, arising before the Effective Date which have not been
21 resolved or disposed of prior to the Effective Date.

22 Any recovery obtained from retained causes of action shall become an additional asset
23 of the Reorganized Debtor and may distributed to creditors or used in connection with the
24 operations of the Reorganized Debtor's business, in the sole discretion of the Reorganized
25 Debtor, unless otherwise ordered by the Court.

26 **XVI. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

27 On the Effective Date, Debtor assumes all executory contracts and unexpired leases in
28 existence as of such date, unless, prior to the Effective Date, SMA files a motion to reject an

1 executory contract in which case the Court shall determine if such contract is assumed or
2 rejected. Claims under § 502(g) of the Bankruptcy Code arising as a result of the rejection of
3 executory contracts or unexpired leases shall be filed no later than thirty (30) days after the
4 entry of an order rejecting such executory contract or unexpired lease. Any such Claims not
5 timely filed and served shall be disallowed.

6 **XVII. REVESTING**

7 Except as provided for in the Plan or in the Confirmation Order, on the Effective Date
8 the Reorganized Debtor shall be vested with all the property of the Estate free and clear of all
9 claims, liens, charges, and other interests of Creditors, arising prior to the Effective Date. Upon
10 the Effective Date, the Reorganized Debtor shall operate its business free of any restrictions.

11 DATED: April 4, 2013.

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1 E-FILED this 4th day of April 2013
2 with the Clerk of the Court.

3 COPIES of the foregoing were served
4 electronically this 4th day of April 2013
5 via the Court's ECF system on all parties
6 that have appeared in this case.

7 /s/ Barrie Peagler